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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7788 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? no

KARANSINH AMARSINH GOHEL

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 09/07/98

ORAL JUDGEMENT

Leave to join Rajendrasinh Gohel as party petitioner no.2 in this petition.

Rule. Mr. Munshaw learned advocate for the respondents waives service notice of Rule on behalf of the respondent.

2. The petitioner no.1 in this petition had joined the respondents as a labourer on 10.2.1958. Thereafter he was promoted to the post of driver in the year 1964 and he was serving with the respondent corporation till 13.3.1995. The petitioner no.1. Karansinh Amarsinh Gohel was examined by the medical authority and on 13.3.95 a certificate was issued declaring him unfit for such a job in the corporation. On the strength of said certificate an order terminating the services of the petitioner no.1 was passed on 20.3.95. Before this termination order, the son of petitioner no.1 Manoharsinh had applied under clause 29 of the settlement for being considered for the post of conductor as per the terms of the said clause and he was selected for the said post. Thereafter he joined the respondent corporation and he is in service with the respondent corporation as a conductor.

3. After the termination of services of petitioner no.1, petitioner no.2 applied for getting employment under clause 30 of the settlement between the corporation and its employees. Said representation made by the petitioner no.2 was rejected by passing an order mentioning therein that as the other son of the petitioner no.1 was already given employment under clause 29, the application given by the petitioner could not be accepted and the same has been rejected.

4. Therefore, the petitioners are challenging the rejection of the claim made by the petitioner no.2 for getting the appointment on compassionate grounds under clause 30. Along with the same by amending the petition, the petitioner no.1 is also challenging the termination of his services.

5. The claim of the petitioners is resisted by the respondents. It is contended that the claim for challenging the termination of services of petitioner no.1 is hit by delay and laches. The petitioner no.1 has taken all the benefits of termination order without raising any objection and after taking said benefits, after about 3 years the petitioner has come before this Court. Therefore, the petitioner no.1's claim to

challenge the order of termination should be rejected. It is further contended that in views of the medical certificate issued, the termination is quite legal and valid.

6. It is further contended that rejection of the claim of the petitioner no.2 for getting appointment is quite justified. It is contended on behalf of the respondents that the elder brother of the petitioner no.2 is already in employment of the corporation and as that employment was given by humanitarian consideration and on compassionate grounds, the claim of petitioner no.2 could not be entertained. In the circumstances it is contended on behalf of the respondents that the petition should be dismissed.

7. Learned advocate for the petitioners Mr. H.K.Rathod submitted that he is not pressing the claim for challenging the termination of services of the petitioner no.1. Therefore, in view of the same, I am not going in details regarding the termination of services of the petitioner no.1.

8. There is no dispute of the fact that there is settlement between the respondent corporation and its employees. The dispute which has been brought up in this petition is covered by two clauses viz. clauses 29 and 30.

If the above provision 29 is considered then, it would be quite clear that by clause no.29, a child of an employee of the respondent corporation is permitted to directly apply for consideration of a post with the respondent corporation, in case if the said employee has completed more than ten years service. Said clause further says that such a direct application could be made by the child provided he has already got his name registered with the Employment Exchange and said registration with the Employment Exchange is alive. The clause no where says that after giving such an application, the corporation has to allow the child to join the corporation or to give appointment to the child of an employee who has put in ten years of service. Clause No.29 only lays down that a child of an employee of the corporation is permitted to directly apply to the corporation inspite of the fact that his name is not recommended by the employment exchange. The corporation is seeking the names of the persons who have registered their names with the employment exchange and is considering those candidates whose names are recommended by the employment exchange for the post to be filled in. By clause 29, a child of an employee is given permission to directly apply to the corporation if the child has got registration with Employment Exchange and such registration is alive and his name has to be considered inspite of the fact that his name is not recommended by the employment exchange. That does not mean that a child is given any appointment on account of making such an application. By clause 29, an opportunity is given to a child of an employee for being considered for the post in question along with other candidates whose names are recommended by employment exchange. Therefore, if any appointment happened to be given to a child of an employee of the corporation, after the child had applied by taking aid of clause 29 it could not be said that the appointment is an appointment on compassionate ground.

9. If the application given by the petitioner no.2 is considered then it would be quite clear that the petitioner no.2 had applied for getting employment under clause 30. Clause 30 is providing for giving appointment on compassionate grounds to the relation of an employee in case said employees happens to meet with the death during his service or to retire on the ground of health. The corporation has committed a blunder in treating this

application of petitioner no.2 as an application under clause 29.. There is no connection between clause 29 and clause 30. Clause 30 is an independent provision for consideration and giving appointment on compassionate grounds. The corporation will have to consider the application given by petitioner no.2 under clause 30 and to see whether he fulfils the conditions for getting appointment of compassionate ground. The corporation is not justified in rejecting the claim of the petitioner merely because his elder brother happens to get an opportunity of being appointment after making direct application under clause 29. The appointment given to the elder brother of the petitioner no.2, cannot be said to be an appointment on compassionate grounds. Only because there was earlier benefit taken by another relation of an employee under clause 29, it cannot be said that petitioner no.2 is not entitled to get appointment in the corporation. I therefore, allow this petition and quash and set aside the order rejecting the claim of petitioner no.2. I hereby direct the corporation to reconsider said application made by petitioner no.2 under clause 30 and other provisions by considering him for the post to which he may be qualified for getting job on compassionate ground within six weeks from the date of receipt of the writ of this court. Rule is made absolute accordingly. No order as to costs.

(S.D.Pandit.J)